

**REMARKS**

Claims 1-5 are all the claims pending in the application.

Applicant has amended Claim 1 to recite that at least the ends of the gas supply tubes (6) have their axes diverging from the central supply tube (1) and appreciably parallel to a wall of the downstream conical diverging part (5). This amendment to Claim 1 is supported by FIG. 1 of the application. Applicant has also amended Claim 1 to recite that the central tube extends into the converging part up to a point situated at the level of the juncture of the converging part (3) and the neck (4), wherein the gas supply tubes (6) extend at the same depth which can be the same as or less than the depth of penetration of the central tube (1). This amendment to Claim 1 is supported by the sixth full paragraph at page 4 of the specification, as well as FIG. 1 and the third full paragraph at page 5.

No new matter has been added. In this regard, the fundamental factual inquiry with respect to whether an amended claim is adequately supported by the application as filed is whether the amended claim defines an invention that was clearly conveyed to those skilled in the art at the time the application was filed. Ralston Purina Co. v. Far-Mar-Co., Inc., 227 USPQ 177, 179 (Fed. Cir. 1985). The subject matter of the amended claim need not be described literally, *i.e.*, using the same terms or *in haec verba*, in order for the disclosure to satisfy the description requirement. MPEP §2163.02. In the present case, FIG. 1 and the paragraphs in the specification identified above clearly convey to one of ordinary skill in the art that Applicant had possession at the time the application was filed of the invention defined by amended Claim 1.

**I. Rejection Under 35 U.S.C. § 102**

Claims 1-5 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,164,263 ("US '263").

Applicant respectfully traverses. US '263 does not disclose the device of amended Claim 1 with the specificity required by §102, such that US '263 does not anticipate amended Claim 1.

US '263 discloses a device comprising a gas supply tube situated along the axis of a body forming a venturi, the venturi comprising an upstream conical converging part, an intermediate cylindrical neck part, and a downstream conical diverging part, a plurality of gas supply tubes arranged in at least one ring around the central supply.

US '263, however, discloses gas supply tubes that have their axes converging towards each other and towards the central gas supply tube. Furthermore, neither the central tube nor the additional gas supply tubes of US '263 extend into the converging part of the venturi up to a point situated at the level of the juncture of the converging part and the neck.

For the foregoing reasons, Applicant respectfully requests reconsideration and withdrawal of the §102(b) rejection of Claims 1-5.

## **II. Rejection Under 35 U.S.C. § 103**

Claims 1-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,659,962 ("US '962") in view of U.S. Patent No. 2,072,599 ("US '599") and FR 000521176 ("FR '176").

Applicant respectfully traverses. The combination of US '962 in view of US '599 and FR '176 does not teach or suggest each and every element of the device of amended Claim 1, and one of ordinary skill in the art would not have been motivated to combine the references as proposed by the Examiner.

The device of amended Claim 1 requires at least the ends of the gas supply tubes (6) to have their axes diverging from the central supply tube (1) and appreciably parallel to a wall of the downstream conical diverging part (5). Also, the device of amended Claim 1 requires the central tube to extend into the converging part up to a point situated at the level of the juncture of the converging part (3) and the neck (4), wherein the gas supply tubes (6) extend at the same depth which can be the same as or less than the depth of penetration of the central tube (1).

First, the primary reference, US '962, does not disclose or suggest the above elements of Claim 1, and the combination of US '599 and FR '176 does not cure this deficiency of US '962,

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even if one of ordinary skill in the art would have been motivated to modify US '962 by reference to US '599 and FR '176, as proposed by the Examiner.

Second, one of ordinary skill in the art would not have been motivated to modify US '962 by reference to US '599 and FR '176, as proposed by the Examiner.

In this regard, a proper analysis under §103 requires, *inter alia*, consideration of whether the prior art would have suggested to those of ordinary skill in the art that the prior art should be modified in order to arrive at the claimed invention. However, the mere possibility that the prior art may be modified so as to arrive at the claimed invention does not render obvious the invention unless the prior art suggested the desirability of the proposed modification. The suggestion to modify must be "clear and particular." In re Sang Su Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433-1434 (Fed. Cir. 2002); Winner Int'l Royalty Corp. v. Ching-Rong Wang, 202 F.3d 1340, 1348-1349, 53 USPQ2d 1580, 1586-1587 (Fed. Cir. 2000).

In the case of modifying US '962 by reference to US '599 and FR '176, there is no suggestion to do so within any of US '962, US '599, or FR '176, and certainly not a clear and particular suggestion of the desirability of the Examiner's proposed modification.

For example, at page 7 of the final Office Action,<sup>1</sup> the Examiner states that "for the purpose of providing a suitable alternative venturi structure, it would have been obvious ... to modify the venturi [US '962] to include an upstream 'conical' shaped converging part, and to orient at least the ends (34, 36) of the gas supply tubes in [US '962] such that the axis of each tube appreciably parallel to the downstream conical diverging part, in view of the teaching of [FR '176]." Providing a suitable alternative venturi structure, however, only represents the mere possibility that the prior art may be modified as proposed by the Examiner. The Examiner has not identified the desirability of the proposed modification, and especially not a "clear and particular" suggestion of the desirability to modify.

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<sup>1</sup> The pages of the final Office Action are not numbered. Applicant has assumed that the first page after the Office Action Summary page is page 2, as is typical with an Office Action.

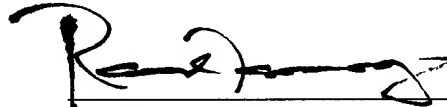
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For the foregoing reasons, Applicant respectfully requests reconsideration and withdrawal of the §103(a) rejection of Claims 1-5.

Reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Raul Tamayo", written over a horizontal line.

L. Raul Tamayo  
Registration No. 47,125

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

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